



Memorandum

TO: TRANSPORTATION AND
ENVIRONMENT COMMITTEE

FROM: Joseph Horwedel

SUBJECT: Green Building Ordinance for
New Private Sector Construction

DATE: May 15, 2009

Approved

Date

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Recommend that the following be agendized for June 23, 2009, as a separate item for discussion with the full City Council:

Approval of an Ordinance amending Title 17 of the San Jose Municipal Code to add a new Chapter 17.84 to establish Green Building Regulations for Private Development to include the following:

- 1) Establishment of the U.S. Green Building Council's (USGBC), Leadership in Energy and Environmental Design (LEED) and Build it Green's (BIG) Green Point Rated rating systems as the mandatory green building standards for the City of San Jose.
- 2) Establishment of the Green Building Refundable Deposit and procedures for the collection and refund of the deposit.
- 3) Describe the process for requesting an exemption from the established Green Building Standards and pipeline provisions for determining how the standards apply to projects already in progress.
- 4) List implementation guidelines to illustrate the application of green building requirements to projects with multiple buildings.
- 5) An analysis of the cost implications resulting from green building requirements in accordance with California Energy Commission requirements.

Staff will review the Policy's implementation during the Summer of 2011 to evaluate the level of compliance with the Policy and to determine whether changes to the established thresholds and green building standards are needed.

May 15, 2009

Subject: Private Sector New Construction Green Building Ordinance

Page 2 of 14

OUTCOME

The City Council adoption of the Green Building Ordinance for New Private Sector Construction will implement Council Policy 6-32, which establishes green building standards for private development, by codifying the procedures for its implementation and enforcement.

BACKGROUND

On October 7, 2008 the City Council adopted Policy 6-32: the Green Building Policy for New Private Sector Construction (Policy) requiring green building certification in specified private sector development projects and directed staff to draft an ordinance to implement the Policy. The Policy took effect January 1, 2009. The Policy and Draft Ordinance apply to new construction and promote Green Building practices in the design, construction, and maintenance of buildings to minimize the use and waste of energy, water and other resources in the City of San Jose.

The Policy and the proposed Ordinance advance the City's Green Vision Goal No.4 to build or retrofit 50 million square feet of green buildings within the next 15 years, as well as Green Vision Goal 2: reducing per capita energy use by 50%, Goal 3: receive 100% of electrical energy from clean renewable sources, Goal 5: divert 100% of waste from landfills and converting waste to energy and Goal 6: Recycle or beneficially reuse 100% of waste water.

ANALYSIS

This memo addresses the substantive issues related to the Green Building Ordinance for New Private Sector Construction and feedback received from outreach to stakeholders.

The Proposed Ordinance

The proposed ordinance will codify the key provisions of the adopted Council Policy 6-32 including the following:

- Green Building Requirements
- Refundable Green Building Deposit
- Exemptions to the Green Building Requirements
- Implementation Guidelines
- Findings of Cost Effectiveness

Green Building Requirements

The proposed ordinance establishes the U.S. Green Building Council's (USGBC), Leadership in Energy and Environmental Design (LEED) and Build it Green's (BIG) Green Point Rated rating systems as the mandatory green building standards for the City of San Jose. The LEED Green Building Rating System is a voluntary, consensus-based national rating system for developing high-performance, sustainable buildings. LEED addresses all building types and emphasizes five areas: sustainable site development, water savings, energy efficiency, materials and resources selection, and indoor environmental quality.

The GreenPoint Rating process evaluates building systems, structures, materials and components to assess energy and water efficiency, indoor air quality, resource efficiency of materials and construction methods, and construction quality.

The proposed ordinance imposes mandatory requirements that projects of 10 or more residential units, 25,000 square feet or more of nonresidential space, or high rise development must meet the performance levels as specified in the chart below.

Applicable Project	Green Building Performance Requirements
Commercial / Industrial Tier 1 ($<25,000$ square feet)	Submit a completed LEED Checklist
Commercial / Industrial Tier 2 ($\geq 25,000$ square feet)	Certify at the LEED Silver Level or higher
Residential Tier 1 (<10 units)	Submit a completed GreenPoint Rated Checklist or LEED Checklist
Residential Tier 2 (≥ 10 units)	Certify as GreenPoint Rated (50 pts) or LEED Certified or higher
High Rise Residential (75' or higher)	Certified at the LEED Certified level or higher

Checklist Requirements

New construction projects involving fewer than 10 residential units or less than 25,000 square feet of non-residential development are required to submit a green building checklist with their building permit application. Although all projects are encouraged to utilize green building practices, the checklist is for educational purposes only and is meant to familiarize the development community with common green building practices. These applicants are not being required to provide verification on the incorporation of these practices into their project nor will they need to meet any minimum threshold or point level or pay the Green Building Deposit.

Demonstration of Compliance

In order to demonstrate compliance, the ordinance requires that verification documents from the USGBC or Build It Green, either a LEED Project Review or GreenPoint Rated Certificate, be submitted to the City in order to document the attainment of the applicable green building standard. In the event the project fails to achieve the applicable green building standards through third party certification, the project can make a request to the Director of Planning, Building, and Code Enforcement to be granted an exception from the green building requirements; otherwise, the project will forfeit the green building deposit described below.

Refundable Green Building Deposit

In accordance with the Policy, the ordinance will establish a Green Building Refundable Deposit for the purposes of assuring compliance with the Green Building Policy. The proposed refundable deposit amount is 30 cents per square foot, up to a maximum single deposit of

\$30,000 per building or shell permit. A shell permit is a building permit for a building constructed without tenant improvements.

The deposit will be required to be paid prior to the issuance of a Building Permit and refunded within a year of project occupancy, upon submittal of the Green Building certification documentation. The deposit proposal is modeled on the existing CDDD program, which collects a refundable deposit based on building square footage which is then returned upon submittal of proof of recycling of 50% of construction debris. The intent of the deposit is to provide an incentive for following through with the formal Green Building Certification process. The deposit rate of \$0.30/square foot is proposed because it is a modest increase above the Construction Demolition Debris Diversion (CDDD) rate of \$0.10-\$0.20 currently applicable to new construction projects.

The deposit amount will vary in relation to the gross square feet being approved through the specific shell or building permit being issued. The refundable deposit is proposed to be collected at the shell permit issuance if no tenant improvements are included. In the event that an occupancy ready building is proposed for construction, the deposit would be collected at building permit issuance.

For residential and non-residential projects involving multiple buildings, it is common that several building or shell permits are issued. For example, if a shell permit is issued, a green building deposit will be paid at shell permit issuance. If an application for tenant improvements for occupancy is later submitted on the same building, a green building deposit will not be paid at that time as it was received at the time of shell permit issuance. In the circumstance of multiple building or shell permits being issued, multiple green building refundable deposits will also be collected. Although no single deposit associated with one shell or complete building permit can exceed \$30,000, the sum of all deposits for a multi-building project could exceed \$30,000 depending on the size of the project and number of buildings or shell permits being issued. For instance, a commercial project with several large buildings would need to pay a green building deposit for each building permit. Although each building permit would not have a green building deposit of more than \$30,000, the sum total of all the deposits for all the buildings in the commercial project could exceed \$30,000.

If a shell permit is issued, the payment of the green building deposit is made at that time so the property owner responsible for the construction of building's shell is responsible for the achievement of the City's adopted green building standards, and not a subsequent tenant of the building making interior improvements to the building, who may not been involved with the early design and construction stages of a building and may not have control over the holistic building infrastructure selected, such as the Heating, Ventilation and Air Conditioning system (HVAC).

Deposit Refund Expiration

For a project involving one building, the building owner must submit to the City the official LEED or GreenPoint Rated paperwork or exemption request within 1 year after the shell or complete building permit is finalized or deemed inactive. In order to provide flexibility for projects that involve multiple buildings, so that green building certification can be achieved for

individual buildings or for the entire scope of the project, the building owner has up to 5 years after the shell or complete building permit is finalized or deemed inactive to submit paperwork demonstrating compliance or submit an application for hardship. After the determined expiration date, the project is no longer eligible to receive a refund for the green building deposit.

Forfeited Green Building Deposits

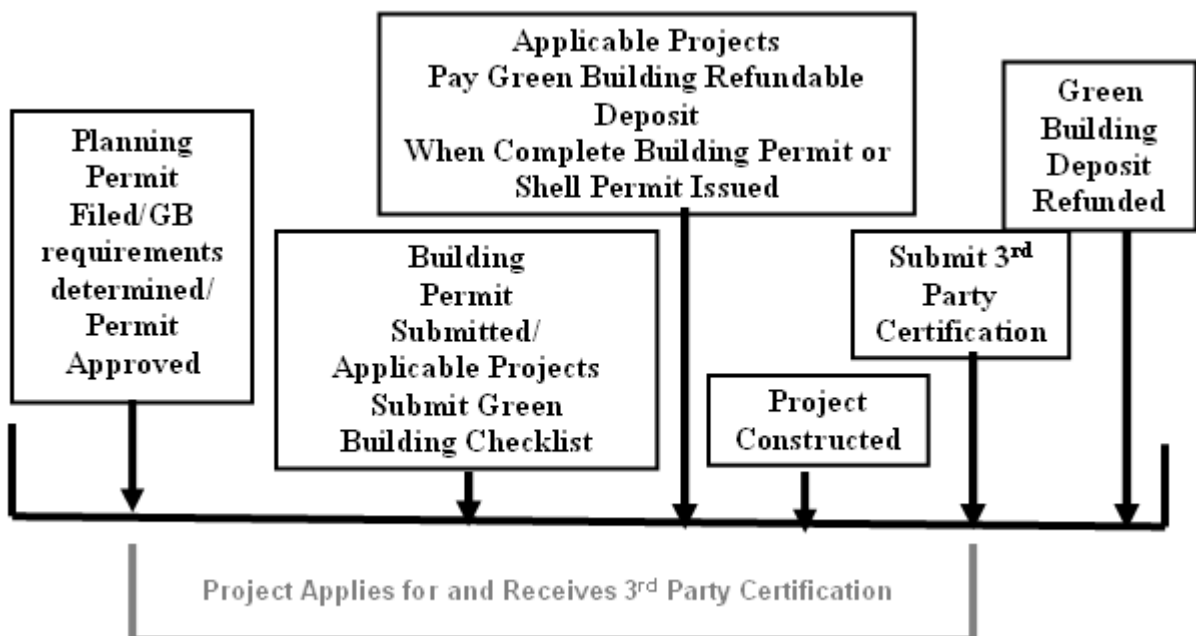
Any green building deposit monies that are forfeited shall be used to support the development and implementation of Green Vision goals including green building and/or the incorporation of green building features in new and existing buildings within the city.

Affordable Housing projects

Affordable housing projects receiving funding from the City's Housing Department shall be subject to the green requirements stated in the adopted Policy but not subject to the payment of the Green Building Deposit at the time of Building Permit issuance for all or the portion of the project with affordable units. The Housing Department would be the guarantor of the green building deposit. In the event that an affordable housing project receiving Housing Department funds did not achieve the green building performance standards called out in the Policy, the Housing Department would pay the amount that would have been collected as the green building deposit as a penalty fee. Market rate projects with an affordable component would be subject to payment of the Green Building Deposit.

Development Process under the Ordinance Provisions

The table below demonstrates when requirements of the proposed green building ordinance will intersect with the development review and project design and construction process.



May 15, 2009

Subject: Private Sector New Construction Green Building Ordinance

Page 6 of 14

Green building performance standards will be determined early in the development review process at the planning permit stage. This will enable the City to communicate expectations during a project's design phase, so that the incorporation of key green building elements, such as solar orientation, storm water management, and the selection of drought tolerant plants can be addressed at critical points during the development review process.

Pipeline Provisions

The adopted Policy called out provisions for projects in the pipeline, which were submitted prior to the Policy's effectiveness date on January 1, 2009. The adopted Policy stated that any filed development permits submitted prior to January 1, 2009 would not be subject to the green building requirements until July 1, 2009, at which time any planning development permits, submitted before January 1, 2009 that were not yet approved by the City, would be subject to the green building requirements.

In light of the slowdown in development activity, staff proposes a modification to the adopted Policy's pipeline. Staff proposes to exempt all development permits that were submitted prior to January 1, 2009 from the green building requirements regardless of when the permit receives approval. This would also facilitate clear communications about expectations with applicants so that project requirements which were conveyed to projects by the City upon initial submittal do not change later in the development review process. It is not anticipated that this change to the pipeline provisions will not significantly impact the achievement of San Jose's Green Vision Goal 4 to build or retrofit 50 million square feet of green buildings within the next 15 years.

Request for Exemptions from Green Building Standards

The green building requirements applicable to a proposed project will be identified as Conditions of Approval in the Planning Development Permit (Site Development, Planned Development, etc.). Upon being notified of the applicable Green Building Standard in the Completeness/Comment (30-day) letter an applicant may request in writing to the Planning Director that a project be exempted from achieving the applicable Green Building Standard. The exemption request must include sufficient information to support a determination that prerequisite points or credits in the LEED Rating System or minimum points required through the GreenPoint Rated rating system can not be achieved because of either the unique type of project or existing physical site constraints. A surcharge to cover staff time to review the request for exemption will be applicable. The Planning Director will take the exemption request into consideration in determining the appropriate green building-related conditions of approval to include in the development permit. These and other permit conditions could be appealed in accordance with the established permit appeal procedures. Subsequent to the approval of a Planning Development Permit, a Permit Amendment, accompanied by a Request for Exemption from Green Building Standards would be submitted in order to eliminate or modify the permit conditions that specify a Green Building Standard.

Implementation Scenarios

Green Building Performance Standards for Projects with Multiple Buildings

While the Policy and the table outlining Applicable Projects and associated Green Building Requirement Standards address projects comprised of one building, the Draft Ordinance includes clarification and procedures for applying those requirements to projects with multiple structures..

Applicability of the Policy to multi-building projects will be determined at the Planning Permit stage. Planning staff will determine if the project as a whole will be required to meet the specified Green Building Requirement Standard or identify the specific buildings or building square foot thresholds within the larger project that will be required to meet the Standard. While the green building standards adopted with the Policy, as shown in a development process table section above, clearly address the green building requirements standards expected for projects that are comprised of one building, the draft ordinance includes procedures for how these requirements would be applied to projects with multiple-buildings.

For multi-building projects, the city will determine at the planning permit stage whether the project as a whole will need to meet the green building requirements specified or whether the individual buildings within the project will need to meet the requirements on a per building basis.

In a multi-building residential project, green building requirements will be based on and applied to the entire project scope for residential development if the individual buildings consist of units with duplicate unit types (models). For instance a townhome project which involves only 3 dwelling units per building but has over 4 buildings with each building having similar layouts, the green building requirements would be based on and applied to the entire project scope of 12 dwelling units. Since 12 dwelling units exceed the 10 unit minimum green building performance thresholds for residential development, the project would be required to achieve LEED Certified or 50 GreenPoint Rated points.

Based on the multi-building green building performance standard criteria detailed above, if individual buildings were to be constructed in a custom fashion in which no duplicate unit typologies exist, the green building performance standards would be based on and applied to the individual buildings, and not the scope of the entire project. For instance if a planning permit was submitted for the subdivision of land to facilitate 15 custom home lots, individual home owners, not a tract home developer, would be responsible to build their particular lot. Although the total number of dwelling units within the scope of the planning permit exceed the green building performance thresholds for the achievement of LEED Certified or 50 GreenPoint Rated points, the construction of all 15 lots would not have units with duplicate unit types and therefore the green building requirements shall based on and applied to each individual single family home. The green building requirements for one individual home requires the submittal of a LEED or GreenPoint checklist by each homeowner prior to the issuance of a building permit.

For a commercial multi-building project, the green building requirements would be based on and apply to the scope of each individual building. For example, the recently constructed commercial center, The Plant, located on the northeast corner of Curter Avenue and Monterey Highway, was submitted under one master planning permit and consists of 32 buildings. The

May 15, 2009

Subject: Private Sector New Construction Green Building Ordinance

Page 8 of 14

total size of the square footage of all the buildings was approximately 640,000 square feet, which exceeds the commercial green building performance size threshold of 25,000 square feet; therefore requiring the achievement of LEED Silver. However, only six buildings of the 32 buildings within the commercial center as individual buildings exceed the size threshold of 25,000 square feet. In reviewing an application for a future new construction commercial center similar to The Plant, the City would determine at the planning development permit stage the extent to which the green building requirements would apply to each individual building. In the example case of The Plant, only the 6 buildings that exceeded the 25,000 square foot threshold would be required to achieve the green building performance standard of Silver and the remaining buildings would be encouraged to achieve the standard and be required to submit the appropriate green building checklist.

Cost Effectiveness

The California Energy Commission requires any local jurisdiction that adopts standards that result in higher energy efficiency levels than required by the State of California's Energy Code (Title 24) provide findings that demonstrate that the jurisdiction's decision to adopt these local standards was based on an understanding of the construction cost-implications for the increased energy efficiency standards. Buildings designed to achieve green building standards of LEED and GreenPoint Rated that were included in the adopted Policy will be ten to fifteen percent more energy efficient than required by Title 24. The Department commissioned a building energy consultant to perform an analysis of the increased costs related to constructing buildings to achieve higher energy efficiency resulting from the green building performance standards. The report made the following findings about the average initial costs of resulting energy upgrades depending on the building type and features included:

The average costs of energy upgrades to achieve the green building performance standards for a single family detached residence, ranges between \$0.57-\$1.35/per square foot. The energy cost savings resulting from the efficiency upgrades allow for a payback of the initial investment within an average of 10.7-20.4 years.

The average costs of energy upgrades to achieve the green building performance standards for a high rise building ranges between \$0.77-\$0.87/per square foot. The energy cost savings resulting from the efficiency upgrades allow for a payback of the initial investment within an average of 5.1-11.1 years.

The average costs of energy upgrades to achieve the green building performance standards for a non-residential midsize building ranges between \$0.52-\$1.44/per square foot. The energy cost savings resulting from the efficiency upgrades allow for a payback of the initial investment within an average of 5.1-10.8 years.

The average costs of energy upgrades to achieve the green building performance standards for a non-residential large building ranges between \$0.74-\$0.82/per square foot. The energy cost savings resulting from the efficiency upgrades allow for a payback of the initial investment within an average of 6.4-9.6 years. The Report is attached, and upon approval of the Ordinance, the Report will be forwarded along with the Ordinance to the California Energy Commission. The Ordinance will become effective September 1, 2009.

EVALUATION AND FOLLOW-UP

This policy addresses primarily Green Vision Goal #4 as well as contributes to implementation of the following Green Vision Goals:

Goal #2: Reduce per capita energy use by 50%

Goal #3: Receive 100 percent of our electrical power from clean renewable sources

Goal #5: Divert 100 percent of the waste from our landfill and convert waste to energy

Goal #6: Recycle or beneficially reuse 100 percent of our wastewater (100 million gallons per day)

A progress report on the implementation of the Private Sector Green Building Policy and corresponding Ordinance to City Council will be provided as part of the annual Green Vision report.

Private Sector Green Building Policy Next Steps	
Implement new construction green building ordinance requirements (Phase I)	September 1, 2009
Outreach begins for Phase II	July 2009
Adoption of amended policy and ordinance .to include Phase II	Fall 2010
Implementation of Phase II	January 2011
Evaluation of progress of policy.	Summer 2011

A policy establishing green building standards for retrofit of existing buildings is scheduled for Phase II of the policy, and will include extensive stakeholder outreach prior to proposal of green building requirements.

PUBLIC OUTREACH/INTEREST

-
- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- X **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
 -
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

May 15, 2009

Subject: Private Sector New Construction Green Building Ordinance

Page 10 of 14

The adoption of a Private Sector New Construction Green Building Ordinance meets Criterion 2. Stakeholder outreach was an integral part of the formation of the draft Ordinance. Staff conducted two rounds of outreach which included two general stakeholder meetings, attendance at standing meetings of the Silicon Valley Chapter of the American Institute of Architects, Santa Clara and San Benito Building and Construction Trades Councils, and attendance at the City's Neighborhood, Developer, and Community Roundtables.

The table below summarizes the stakeholder concerns which have been raised and the resolution of those issues through the draft Ordinance.

Stakeholder Comment	Resolution
<p>Staff received substantial feedback from stakeholders that the requirement for third party certification (using LEED or GreenPoint Rated rating systems) was unnecessary, costly, and time-consuming. There was a request made to develop an alternate path for compliance that could be chosen as an equivalent option to third party certification.</p> <p>The Silicon Valley Chapter of the American Institute of Architects specifically wanted an alternate path of compliance that would enable a licensed architect to verify the project fulfilled the City's Green Building requirements.</p>	<p>The adopted Policy relies on 3rd party verification to demonstrate compliance to green building performance standards. The Policy establishes the LEED and GreenPoint Rated rating systems as reference performance standards. Incorporating alternative standards of compliance for typical projects counters the direction provided by the Council through the adoption of the Policy.</p> <p>The 3rd party standards and verification were chosen in order to avoid multiple city review cycles, processing time, or inspections, which were concerns raised during outreach on the formation of the Policy. By requiring 3rd party verification, all projects are measured against a consistent standard. 3rd party verification also reduces the amount of time or fees required for city staff to confirm compliance with the proposed policy and prevents holding up the various phases of development review to demonstrate compliance.</p> <p>The Santa Clara County Cities Association promotes adoption of the LEED and Build It Green's Rating systems as reference standards in lieu of developing City specific standards, which facilitates establishment of consistent standards throughout the County.</p>

<p>The request was made to allow payment of the green building deposit at the time of certificate of occupancy issuance, rather than at the building permit issuance stage in order to reduce the amount of time developer funds would be tied up for the purpose of demonstrating compliance to green building requirements.</p>	<p>Delaying the green building deposit payment until the issuance of certificate of occupancy is problematic in that the administration becomes substantially more time consuming as the issuance of certificate of occupancy takes place at the project site and not at a city location where payment can be made. Also, no other fees are collected at the issuance of certificate of occupancy. The payment of all other fees and dedications to the City take place at the time of issuance of building permit and are not delayed to the certificate of occupancy.</p>
<p>The green building deposit is considered by some to be too low a rate to serve as a deterrent for noncompliance.</p>	<p>The proposed deposit rate of \$0.30/square foot balances minimizing the burden on the project for receiving additional funds from lenders for financing purposes with the desire to incentivize compliance. There are several factors, including the market, which are pushing development to achieve green building certification. The proposed rate is intended to be low enough so as not to penalize many projects which are already motivated to incorporate green building practices.</p>
<p>Concerns were raised about the refund expiration of the green building deposit. Stakeholders desired ample time to receive green building certification to account for delays resulting from the 3rd party certification process.</p>	<p>Staff incorporated generous expiration limits for issuance of the deposit refund. As drafted, the ordinance allows for up to one year after the building permit is finalized to demonstrate compliance to the green building requirements for projects involving one building and up to five years after the building permit is finalized for projects involving multiple buildings.</p> <p>The finalizing of the building permit indicates the completion of construction of the building itself; whereas the issuance of certificate of occupancy indicates that tenant improvements are completed and tenants or residents are able to move in.</p>
<p>Stakeholders desired an appeal process for determinations made by the Director of PBCE on requests for exemptions to green building requirements.</p>	<p>An appeal process has been included in the draft ordinance to allow the project proponent to appeal the Director of PBCE's decision to the Planning Commission.</p>

May 15, 2009

Subject: Private Sector New Construction Green Building Ordinance

Page 12 of 14

<p>Stakeholders requested incentives and not just requirements that would encourage the incorporation of green building techniques.</p>	<p>By requiring development projects to meet either the LEED or BIG standards, many projects become eligible for existing incentive programs such as PG&E's Savings by Design program as well as free multi-family energy-efficiency design assistance, Energy Star grants, and tax exemptions. The policy does not propose any additional incentives for exceeding the policy requirements due to a reduction in staff resources and budget constraints.</p> <p>Existing processes cannot be expedited without additional staff resources or a reduction in public outreach requirements.</p> <p>Staff considered implementing an incentive/penalty program similar to the City of Portland's feebate program. In the City of Portland, new commercial buildings 20,000 feet or larger that merely meet the Oregon state building code are assessed a fee by the City of up to \$3.46/square foot. That fee is waived for buildings achieving LEED Silver certification. Developers constructing buildings that achieve LEED Gold or Platinum, or will receive rebates of \$1.73–\$17.30/square foot depending on the level of certification. Multifamily residential properties of 5,000 square feet or larger would be subject to the same requirements and eligible for rebates of \$0.51–\$5.15/square foot. Implementing a similar feebate system in San Jose is a possibility after there is sufficient evidence to demonstrate the number of projects that would comply with the established green building performance standards. The number of those who do not comply with these criteria is important to anticipate available funds that will be offered as a rebate to those who exceed requirements. In addition, any rebates that could not be funded through the program itself would need to be funded by the City's General Fund, which result in a potential cost burden.</p>
---	--

POLICY ALTERNATIVES

Alternative #1: Direct Staff to Develop an Alternate Path of Compliance for Typical Projects

Pros:

- Will facilitate the measurement of projects based standards that do not require a project to interact with any verification body other than the City and members of the project team.
- Projects would not incur costs of registering with LEED or BIG and completing required inspections and documentation.

May 15, 2009

Subject: Private Sector New Construction Green Building Ordinance

Page 13 of 14

Cons:

- Implementing a set of green building standards specific only to San José will not allow for the establishment of regionally consistent standards.
- The cost to the project team would be higher than those of the USGBC or BIG, if the city were to provide a set of green building standards unique to San José which includes peer review of documentation and reports necessary to verify the achievement of green building standards.
- Demonstrating compliance with of green building standards specific to San José will be potentially more time consuming endeavor for project applicants as it would require that they familiarize themselves with unique standards only applicable in San José. To promote regional consistency, the Santa Clara County Cities Association has promoted adoption of the LEED and GreenPoint Rated rating systems. The LEED and GreenPoint Rated rating systems are widely used and acknowledged within the Bay Area and national development communities.

Reason for not recommending:

The adopted Policy relies on 3rd party verification for typical projects. Developing an alternate path for compliance for typical projects would equate to developing a set of criteria unique to San Jose. The development of such a green building rating system would result in lengthier and more costly in-City process for verification of these.

Alternative #2: Green Building Deposit to be Payable at the Certificate of Occupancy Stage if Tenant Improvements are Included in Scope of Work.

Pros:

- Delaying the payment of the green building deposit from the time of issuance of building permits to the time of issuance of certificate of occupancy reduces the amount of time a project will need to forgo the additional costs related to carrying the cost of the deposit.
- The building permit issuance occurs prior to the construction of the building; whereas the certificate of occupancy issuance occurs post-construction, after tenant improvements have been installed, typically saving several months of carrying costs for the deposit.

Cons:

- All city fees, such as CDDD, school, and parkland fees are typically received at the issuance of the building permit. Should the green building deposit be paid at the certificate of occupancy stage, there will be a greater need for coordination with inspectors who issue the certificate of occupancy in the field. The elevated need for coordination may also result in the delay of the issuance of certificates of occupancy, which is typically considered to be a point in the development review process requiring prompt response.

May 15, 2009

Subject: Private Sector New Construction Green Building Ordinance

Page 14 of 14

Reason for not recommending:

Delaying the payment of the green building deposit to the certificate of occupancy stage does not align with the point of payment of any other city fees collected in the development review process. In addition, enormous pressure is generally placed on the Building Division staff to release buildings for final occupancy, and payment of a deposit at this stage would delay issuance of the certificate of occupancy. To minimize the time and resources invested in the city's administration of the green building deposit payment and maintain consistent timing with collection of other city fees, staff recommends requiring the deposit be paid at the point of building permit issuance.

COORDINATION

This memo has been coordinated with the Department of Environmental Services, and the Office of the City Manager and the City Attorney.

FISCAL/POLICY ALIGNMENT

As discussed in the background section, the proposed ordinance is consistent with, and supports activities that comply with the City's adopted Green Vision.

CEQA

The adoption of the proposed ordinance is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15308 of the CEQA guidelines.

The increased development cost to comply with the ordinance is not expected to displace development to other areas in the South Bay due to increasing attention to green building among other neighboring cities. For example, the Santa Clara County Cities Association is making green building recommendations for all member cities in Santa Clara County and other jurisdictions have adopted or are considering similar green building requirements. Additionally, green building standards will be mandated at the state level by 2011. It is unlikely that development will move substantially within the region or state, or out of state, to seek regulatory or market conditions with reduced green building requirements.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Richard Buikema, Senior Planner, at 535-7835.

Attachments